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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/830,145	04/23/2004	Patrick Gwen	976,031	7838

7590 06/01/2006

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EXAMINER

DOE, GRACE SC

ART UNIT PAPER NUMBER

3732

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/830,145

Applicant(s)

GWEN, PATRICK

Examiner

Grace SC Doe

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-37 is/are pending in the application.
- 4a) Of the above claim(s) 1-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to Applicant's amendment received on 2/1/06.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 27 and 36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrases "pivotably adjacent ... about an axis" is confusing. Please clarify what constitutes "pivotably adjacent" and "opposite end" of what reference point.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 21-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Halverson (US 4,204,294). Halverson discloses cleaning tool capable of dental cleaning

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including a case (See fig. 1) with a longitudinal axis (See fig. 1) and pair of sides (See fig. 1, part 26), a pivotally mounted brush capable of brushing teeth (See fig. 1 part 14) having bristles extending transverse to the longitudinal axis of the case (See fig. 1, part 16) facing a side (See fig. 1, bristles face all directions) and parallel to the pivoting axis (See fig. 1, part 30, bristles face all directions), pivotally mounted second tool (See fig. 1), and pivotally mounted third tool (See fig. 1). As to claim 24, Brown further discloses that the pivot axis is transverse to the longitudinal axis of the case (See fig. 1). As to claim 25-26, the case also includes a pivotally mounted closure member (See fig. 1 part 12) that allows for the extension of the toothbrush while in the covering position (See figure 2).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sexson (US Patent Publication 2005/0016561) in view of Brown (US 5,423,427). As to claims 21-23, Sexson discloses a dental tool having a pivotally mounted toothbrush (See fig. 1B, parts 112 & 102) having bristles parallel to the pivoting axis (See fig. 1B, parts 112 & 102) and a pivotally mounted second cleaning tool (See fig. 1B, part 110).

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Sexson fails to disclose a case. Brown discloses dental tool having a case (See fig. 8, part 11; col. 3, lines 52) with a longitudinal axis (See fig. 10, part 16) and pair of sides (See fig. 9, parts 12 and the side opposite 12), a pivotally mounted toothbrush (See fig. 8 part 13; col. 3, lines 55-57; col. 4, lines 16, 40-46) having bristles extending transverse to the longitudinal axis of the case (See fig. 10, part 13) facing a side (See fig. 8), pivotally mounted second tool (See fig. 8, part 14), and pivotally mounted third tool (See fig. 8, part 15). It should be noted that the term "side" is broad and may refer to all planer surfaces of Brown's case. Therefore it would be obvious to one of ordinary skill in the art at the time of the invention to modify the dental tool of Sexson with the case and additional cleaning tools of Brown in order to protect the cleaning tools as well as provide a convenient and diversified dental travel pack (See col. 35-38). As to claim 24, Brown further discloses that the pivot axis is transverse to the longitudinal axis of the case (See figs. 8 & 10). As to claim 25-26, the case also includes a pivotally mounted closure member (See fig. 8 part 12; col. 3, lines 51-55) that allows for the extension of the toothbrush while in the covering position (See figure 9; col. 4, lines 40-46).

8. Claims 27-28, 32, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sexson (US Patent Publication 2005/0016561), in view of Brown (US 5,423,427), and further in view of Allen (US 5,950,265). Sexson in view of Brown, discussed above, fails to expressly disclose a case wherein the closure member is pivotally connected at an end opposite to the dental tools. Allen discloses a multi-purpose tool including a case (See figure 1 part 12; col. 3, lines 2-10) wherein tools are

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pivotally mounted at one end of the case (See figure 2, part 38; col. 3, lines 37-39). A closure member is pivotally mounted on the opposite end of the case from the cleaning tools (See figure 2 part 16; col. 3, lines 2-10). As to claim 28, the first cleaning tool has an outwardly extending flap that abuts the closure member when the closure member is in the covering position (See figure 3 part 70; col. 3, lines 62-67, col. 4, lines 1-3, col. 4, lines 48-56). As to claim 32 and 37, the first cleaning tool also discloses a notch, in which the closure member is received when the closure member is in a covering position (See figure 3 part 72; col. 3, lines 62-67, col. 4, lines 1-3, col. 4, lines 48-56). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the dental tool of Sexson in view of Brown with Allen's case, closure member, tool flaps, and notch in order to create a multi-purpose tool having improved mechanisms for locking tools in the open and closed position as well as providing housing capable of separating tools in use from those not in use (See col.1, lines 36-46).

9. Claims 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sexson (US Patent Publication 2005/0016561), in view of Brown (US 5,423,427), in view of Seber (US 6,170,104), and further in view of Glesser (US 4,776,094). Sexson in view of Brown fails to disclose lever members. Seber discloses a multi-functional hand tool including a first cleaning tool having a lever member extending outwardly of the case (See figure 2, part 100a; col. 5, lines 16-24) that is angularly offset from the lever member of the second cleaning tool (See figure 2, part 100a, 100b, 100c; col. 5, lines

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16-24) in order to enable efficient and convenient tool selection. Seber is considered analogous art because the disclosed lever member is reasonably pertinent to the particular problem with which the Applicant is concerned, facilitating tool selection.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the dental tool of Sexson in view of Brown with Seber's angularly offset levers in order to facilitate the user's selection and deployment a tool from a retracted to a fully extended position (See col. 5, lines 16-24).

10. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sexson (US Patent Publication 2005/0016561), in view of Brown (US 5,423,427), in view of Seber (US 6,170,104), and further in view of Glesser (US 4,776,094). Brown in view of Seber, discussed above, fails to disclose a case abutment member that contacts the lever member. Glesser teaches a case abutment member (See figure 2 part 25; col. 3 lines 48-58; col. 4 lines 24-27) that contacts the lever member (See figure 1 parts 33 and 34; col. 4 lines 13-27) of the first cleaning tool in order to lock a tool in the open position. Glesser is considered analogous art because the disclosed abutment member is reasonably pertinent to the particular problem with which the Applicant is concerned, stabilizing a tool in the open position. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the dental tool of Sexson in view of Brown and Seber with Glesser's abutment mechanism in order to lock a tool in the open position (See col. 2, lines 10-13).

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11. Claims 33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sexson (US Patent Publication 2005/0016561) in view of Brown (US 5,423,427), and further in view of Cabedo-Deslierres (US Patent Publication 2001/0054211). Brown, discussed above, further discloses a toothpick (See fig. 8, part 14). Sexson in view of Brown, discussed above, fails to specify that the third cleaning tool is an interdental brush. Cabedo-Deslierres discloses a dental apparatus having a toothpick (See figure 12, part 30; col. 7, lines 38; col. 1, lines 24-28) and interdental brush (See figure 12, part 28; col. 7, line 37) in order to promote dental hygiene and allow the user to achieve a triple clean effect (See col. 2, lines 56-59). Therefore, it would be obvious to one of ordinary skill in the art to modify the dental tool of Sexson in view of Brown by replacing Brown's flossing tool with Cabedo-Deslierres' interdental brush in order to allow for thorough and effective interdental cleaning. Furthermore, the combination of a toothbrush, toothpick, and interdental brush in a single carrying case allows for convenient accessibility and encourages good oral hygiene (See col. 3, lines 19, 30-34).

12. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sexson (US Patent Publication 2005/0016561) in view of Brown (US 5,423,427), in view of Cabedo-Deslierres (US Patent Publication 2001/0054211), and further in view of Sanders (US 3,763,869). Sexson in view of Brown and Cabedo-Deslierres, discussed above, fails to disclose that the toothpick and interdental brush are sized so as to be stored beneath the bristles of the toothbrush. Sanders, also part of the dental tool art, discloses in his drawings sizing objects so as to be conveniently stored beneath the

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toothbrush bristles in order to prevent damage to the toothbrush bristles (See figure 1, part 24). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the dental tool apparatus of Sexson in view of Brown and Cabedo-Deslierres with Sanders' object sizing in order to prevent damage to the toothbrush. Furthermore, it would be obvious to one of ordinary skill in the art at the time of the invention to size the tools disclosed by Brown so as to fit beneath the toothbrush bristles because a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1995).

13. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sexson (US Patent Publication 2005/0016561), in view of Brown (US 5,423,427), in view of Allen (US 5,950,265), and further in view of Sanders (US 3,763,869). Sexson in view of Brown and Allen are discussed above. Allen further discloses a pivot axis parallel to the axis of rotation of the toothbrush (See fig. 2, parts 92 and 38). Sexson in view of Brown and Allen fails to disclose a cleaning tool sized so as to be stored beneath the bristles of the toothbrush. Sanders discloses in his drawings sizing objects so as to be conveniently stored beneath the toothbrush bristles in order to prevent bristle damage (See figure 1, part 24). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the dental tool apparatus of Sexson in view of Brown and Allen with Sanders' object sizing in order to protect the toothbrush bristles. In the alternative, it would be obvious to one of ordinary skill in the art at the time of the invention to size the tools disclosed by Brown so as to fit beneath

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the toothbrush bristles because a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1995).

Double Patenting

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement. Effective January

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1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claims 21-37 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2, 4-11 and 13 of copending Application No. 10/647128 in view of Sexson (US 2005/0016561) in view of Brown (US 5423427), in view of Cabedo-Deslierres (US Pat. Pub. 2001/0054211), and further in view of Sanders (US 3763869). Although the conflicting claims are not identical, they are not patentably distinct from each other because as to claims 21-23, 29-31, 35, and 37, the copending application fails to claim a toothbrush having bristles parallel to the axial pivot. Sexson, discussed above, discloses bristles parallel to the axial pivot. Therefore it would be obvious to one of ordinary skill in the art to modify the copending application with the orientation of Sexson in order to facilitate extension of the toothbrush. The copending application fails to expressly claim a case having a longitudinal axis and a toothbrush with bristles transverse to the longitudinal axis of the case. Brown, discussed above, teaches a case with a longitudinal axis and toothbrush with bristles transverse to the said axis. Therefore it would be obvious to one of ordinary skill in the art at the time of the invention to modify the copending application in view of Sexson with Brown in order to make use of the known tool orientation to effectively conserve and utilize space within the carrying case. As to claims 24-26, the copending application in view of Sexson fails to disclose that the pivot axis transverse to the axis of the case. Brown, discussed above, further teaches a toothbrush adjacent to an end of

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the case and mounted on an axis transverse to the case axis. Therefore it would be obvious to one of ordinary skill in the art at the time of the invention to modify the copending application with Brown in order to effectively conserve and utilize space within the carrying case. As to claims 27-28, 32, and 37, the copending application in view of Brown, discussed above, fails to disclose a closure member adjacent to an end of the case, opposite from where the cleaning tools are hinged, closure member having an axis transverse to the case axis, tools having an extending flap, closure member having a surface abutting the tool flap when in the covering position, and a notch located on the tool. Allen, discussed above, teaches a closure member adjacent an opposite end of the case having an axis transverse to the case axis and a flap abutment member. Allen also teaches a tool flap and tool notch. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the copending application in view of Brown with Allen in order to securely lock the tools in the operable and inoperable positions (See col. 1, lines 35-41). As to claim 33, the copending application fails to disclose that the third cleaning tool is an interdental brush. Cabedo-Deslierres, discussed above, teaches that the third tool is an interdental brush. Therefore it would be been obvious to one of ordinary skill in the art at the time of the invention to modify the copending application in view of Cabedo-Deslierres as an obvious matter of choice to replace one dental tool for another in order to provide for thorough and effective interdental cleaning. As to claim 34 and 36, the copending application fails to disclose that a cleaning tool fits beneath the bristles of the toothbrush. Sanders, discussed above, discloses that objects may be sized to fit

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beneath the bristles of a toothbrush. Therefore it would be obvious to one of ordinary skill in the art to modify the copending application in view of Sanders in order to prevent damage to the toothbrush bristles.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Amendment

16. Please refer to the above 35 U.S.C. 103 rejection.

Response to Arguments

17. Applicant's arguments filed on 3/1/06 have been fully considered but they are not persuasive.

18. In response to applicant's broad argument that the references fail to show or suggest the advantages of applicant's invention, it is noted that the features or advantages upon which applicant relies (i.e. improve the rigidity of the toothbrush when it is deployed) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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19. In response to Applicant's argument that the prior art fails to disclose a toothbrush located within a case, Brown (5,423,427) and Sanders (US 3,763,869) clearly show a toothbrush located within a case.

20. In response to Applicant's argument that the orientation of the prior art prevents a case from incorporating other cleaning tools, Brown (5,423,427) and Sanders (US 3,763,869) clearly show a toothbrush and additional cleaning tool located within a case.

21. Applicant's arguments with respect to claims 21-27, specifically pertaining to the orientation of the toothbrush bristles in relation to the axial pivot in claims 21, 36-37, have been considered but are moot in view of the new ground(s) of rejection.

With regards to claim 21, although moot, it should be noted that a face reads on the amended claim limitation "side."

Although new grounds are given to reject claims 21-27, the Examiner would like to address a few of Applicant's arguments. With respect to claims 34 and 36, Applicant argues that Brown in view of Allen or Brown alone fail to show cleaning tools 14 and 15 stowed beneath the toothbrush bristles. As discussed above, the modifying reference of Sanders, however, does disclose sizing objects so as to be conveniently stored beneath the toothbrush bristles in order to prevent bristle damage (See figure 1, part 24). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the dental tool apparatus of Sexson in view of Brown and Allen with Sanders' object sizing in order to protect the toothbrush bristles.

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Further, it would be obvious to one of ordinary skill in the art at the time of the invention to size the tools disclosed by Brown so as to fit beneath the toothbrush bristles because a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1995). Applicant also contends that Brown's axle is unnecessarily long. The claims, however, fail to exclude a dental tool having a long axle. Applicant's argument that Sanders' toothbrush bristles are not oriented parallel to the axial pivot has no import. The Sanders reference is cited only to teach sizing of other dental cleaning tools so as to be stowed within a case beneath the bristles of a toothbrush. Applicant contends that Sanders fails to disclose a surface capable of enhancing the strength of the toothbrush. Such a feature however is not a positive limitation of the claims. Applicant also contends that the closure member of Sanders would have an adverse impact on the toothbrush handle. Again, Sanders is only cited as a modifying reference to show sizing cleaning tools so as to fit beneath the bristles of a toothbrush.

With respect to claim 37, Applicant contends that Allen fails to disclose a flap. Allen, however, expressly and clearly discloses that a flap, 70, abuts the closure member, 78 (See figure 3 part 70; col. 3, lines 62-67, col. 4, lines 1-3, col. 4, lines 48-56). Applicant is also raises the issue that Brown discloses small spaces enabling flexing of the cleaning tools. The claims, however, does not claim a rigid structure.

Conclusion

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


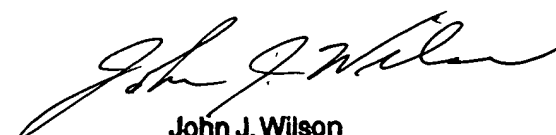
23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A. US 5,913,346 (Narwani) discloses a toothbrush with bristles parallel to the axial pivot.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Grace SC Doe whose telephone number is (571) 272-2831. The examiner can normally be reached Monday – Thursday from 8:00am - 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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